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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IMMERSION CORPORATION,
Plaintiff,

v.

SONY COMPUTER ENTERTAINMENT
AMERICA, INC., SONY COMPUTER
ENTERTAINMENT, INC., and MICROSOFT
CORPORATION,
Defendants.

No. C 02-0710 CW
ORDER ENTERING
PERMANENT
INJUNCTION AND
GRANTING
DEFENDANTS'
MOTION TO STAY
INJUNCTION
PENDING APPEAL

_____ /

For the reasons set forth in its January 10, 2005 Order, and having entered judgment in favor of Plaintiff Immersion Corp. (Immersion), the Court hereby PERMANENTLY ENJOINS Defendants Sony Computer Entertainment America, Inc., (SCEA) and Sony Computer Entertainment, Inc., (SCEI) (collectively Sony) from manufacturing, using, and/or selling in, or importing into, the United States the infringing Sony Playstation system, including its Playstation consoles, Dualshock controllers, and those games found by the jury to infringe.¹ As described in the

¹The jury found that the following games, in conjunction with the Playstation consoles and Dualshock controllers, infringed either the '213 patent, the '333 patent or both patents: A Bug's Life; Amplitude; Ape Escape; Atlantis: The Lost Empire; Bloody Roar 2; Cool Boarders 3; Cool Boarders 4; Cool Boarders 2001; Crash Bash; Crash Team Racing; Drakan: The Ancients' Gate; Emperor's New Groove; Extermination; FantaVision; Final Fantasy X; Formula One 2001; The Getaway; Gran Turismo; Gran Turismo 2; Gran Turismo 3; Grand Theft Auto: Vice City; Grand Theft Auto 3; Grind Session; ICO; Jak & Daxter; Kinetica; Kingdom Hearts; Legend of the Dragoon; The Mark of Kri; Medal of Honor Frontline; Medieval 2; Metal Gear Solid 2;

1 January 10 Order, no recall is required of products already
2 sold, but Sony will pay a license fee on all products already
3 placed in the stream of commerce.

4 The Court GRANTS Sony's counter-motion for a stay (Docket
5 No. 1370) of the injunction pending appeal, pursuant to Federal
6 Rule of Civil Procedure 62(c). In making this determination,
7 the Court considers the strength of Sony's showing that it is
8 likely to succeed on the merits of its appeal, whether Sony will
9 be irreparably injured absent a stay, whether the stay will
10 substantially injure Immersion, and where the public interest
11 lies. Standard Havens Products, Inc., v. Gencor Indus., Inc.,
12 897 F.2d 511, 512 (Fed. Cir. 1990), quoting Hilton v.
13 Braunskill, 481 U.S. 770, 776, (1987). The Court finds that on
14 balance, these factors weigh in favor of granting a stay. None
15 of the authority cited by Immersion suggests that a stay of the
16 injunction pending appeal would be an abuse of discretion. As
17 long as the injunction is stayed, the compulsory license remains
18 in effect.

19 Sony has filed with the Court a "supplemental submission"
20 of updated sales data for the year 2004. Sony's evidence shows
21 that the games found by the jury to infringe now represent a
22 smaller proportion of overall game sales; for instance, none of
23 the top ten best-selling games for 2004 were accused. See Mehta

24 _____
25 Monster's, Inc.; Sly Cooper and the Thievius Racoonus; SOCOM
26 Navy Seals; Speed Punks; Spyro: Ripto's Rage; Spyro: Year of
27 the Dragon; Stuart Little 2; Syphon Filter 2; Syphon Filter 3;
28 Tony Hawk's Pro Skater 3; Twisted Metal: Black; Twisted Metal
4; Twisted Metal: Small Brawl; Treasure Planet; and War of the
Monsters.

1 Decl., Ex. D, TRSTS Report for December 2004. On the other
2 hand, Immersion has provided the Court with supplemental
3 evidence from its expert, Dr. Colgate, showing that Sony has
4 continued to release games that contain the complex vibration
5 found by the jury to infringe. See Colgate Decl. ¶¶ 5-6. As
6 Sony notes, "the video game industry is driven by trends," and
7 "games go in and out of style in months." Sony Supplemental
8 Submission Re: Updated Sales Data Relevant to Motions for
9 Injunction and Stay at 2. Absent evidence from Sony that it has
10 redesigned its products so as to avoid the systems and methods
11 found by the jury to infringe, the Court declines to revise the
12 scope of its injunction based on the introduction of new games
13 and the decline in popularity of the accused games.

14

15 IT IS SO ORDERED.

16 Dated: 3/24/05

/s/ CLAUDIA WILKEN
CLAUDIA WILKEN
United States District Judge

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